

United States District Court
Southern District of Texas
FILED

NOV 20 2008

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

RICHARD FLETCHER

Defendant.

§ CRIMINAL NO. _____
§ 18 U.S.C. § 2
§ 18 U.S.C. § 371
§ 18 U.S.C. § 2320(a)
§ 21 U.S.C. § 331(a)
§

H-08-761

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

(Conspiracy – 18 U.S.C. § 371)

A. INTRODUCTION

At all times material to this indictment:

1. The United States Food and Drug Administration (FDA) is the agency of the United States charged with the responsibility of protecting the health and safety of the American public by ensuring, among other things, that drugs sold for administration to humans bear labeling containing true and accurate information. The FDA's responsibilities include regulating the labeling and distributing of prescription drugs shipped or received in interstate commerce.

2. United States Immigration and Customs Enforcement (ICE) is an agency of the United States charged with the responsibility of investigating the smuggling of contraband into the United States to include counterfeit merchandise.

3. Under the Food Drug and Cosmetic Act, the definition of a "drug" includes articles which (1) are intended for use in the diagnoses, cure, mitigation, treatment or prevention of disease in man, and (2) are intended to affect the structure or function of the body of man. Due to

the toxicity and other potential harmful effects, certain drugs are not considered safe for use except for use under the supervision of a practitioner licensed by law to administer such drugs. These drugs are known as prescription drugs.

4. Viagra was a prescription drug product that had been approved by the FDA for distribution within the United States.

5. Pfizer Pharmaceuticals (Pfizer) had the exclusive right to manufacture Viagra for distribution within the United States.

6. The name "Viagra" was a trademark owned by Pfizer and is registered in the principal registry in the United States Patent and Trademark Office.

7. Cialis was a prescription drug product that had been approved by the FDA for distribution within the United States.

8. Eli Lilly Corporation (Eli Lilly) had the exclusive right to manufacture Cialis for distribution within the United States.

9. The name "Cialis" was a trademark owned by Eli Lilly and is registered in the principal registry in the United States Patent and Trademark Office.

10. Levitra was a prescription drug product that had been approved by the FDA for distribution within the United States.

11. Bayer Corporation (Bayer) had the exclusive right to manufacture Levitra for distribution within the United States.

12. The name "Levitra" was a trademark owned by Bayer and is registered in the principal registry in the United States Patent and Trademark Office.

13. The Food Drug and Cosmetic Act also regulates the importation, delivery, distribution and receipt of prescription drugs in interstate commerce. Under the Act, a

prescription drug is deemed misbranded if its labeling is false or misleading in any particular manner. A prescription drug is also deemed to be counterfeit if it bears a trademark without the authorization of the registrant of the trademark.

14. Richard Fletcher, defendant herein, is a resident of Dallas, Texas

B. THE CONSPIRACY

15. Beginning sometime in 2007 and continuing thereafter to in or about June, 2008, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

RICHARD FLETCHER

did knowingly, intentionally, and willfully combine, conspire and confederate and agree with other persons unknown to the grand jury to commit certain offenses against the United States, namely:

- a. To traffic and attempt to traffic in counterfeit goods in violation of Title 18, United States Code, Section 2320(a).
- b. To violate the Food, Drug and Cosmetic Act, namely, with the intent to defraud and mislead, cause the introduction and delivery for introduction of prescription drugs into interstate commerce that are misbranded, in violation of Title 21, United States Code, Section 331(a) and 333(a)(2).

C. OBJECT OF THE CONSPIRACY

16. It was the object of the conspiracy for the defendant and others to unlawfully enrich themselves by importing pharmaceutical drug products that bore the trademark Viagra and Cialis, without the authorization of manufacturer of said drugs, and thereafter resell the drugs to the public.

D. MANNER AND MEANS

The manner and means of the conspiracy included, but were not limited to the following:

17. Defendant RICHARD FLETCHER would and did cause the importation of counterfeit pharmaceuticals from the People's Republic of China into the United States. The counterfeit pills bore the same mark, shape and appearance as the genuine Viagra and Cialis pills.

18. Defendant RICHARD FLETCHER would and did cause pharmaceuticals to be misbranded. The pharmaceuticals were misbranded in that:

- a. The labeling affixed to the packing falsely represented that the package contained genuine Viagra and Cialis pharmaceutical products; and
- b. The pills were manufactured and dispensed from a non-FDA approved facility.

19. Defendant RICHARD FLETCHER would and did use an internet website to facilitate transactions involving the sale of counterfeit and misbranded pharmaceuticals.

20. Defendant RICHARD FLETCHER would and did negotiate the sale of counterfeit pharmaceuticals with a federal agent acting in an undercover capacity. The pharmaceutical drugs received from the defendant were analyzed by the registered trademark holders and were determined to be counterfeit.

OVERT ACTS

21. In furtherance of the conspiracy and to effect the objects thereof, the following Overt Acts, among others, were committed in the Southern District of Texas:

(1) On or about April 11, 2008, defendant RICHARD FLETCHER sent an email message using web address exportusa@hotmail.com acknowledging the receipt of an order of pharmaceutical drugs.

(2) On or about April 15, 2008, defendant RICHARD FLETCHER sent an email message using web address exportusa@hotmail.com to persons utilizing web address sun_liang@msn.com requesting 1000 Viagra pills be sent to an address provided by an undercover agent.

(3) On or about April 25, 2008, defendant RICHARD FLETCHER caused a package containing approximately 1000 Viagra pills to be imported to the United States from the Peoples Republic of China. The Viagra pills were later determined to be counterfeit.

(4) On or about June 18, 2005, defendant RICHARD FLETCHER sent an email message using web address exportusa@hotmail.com to an undercover agent stating that Levitra, Cialis and Viagra “look like originals ... perfect copies for product and packaging and they work very well.”

(5) On or about June 30, 2008, defendant RICHARD FLETCHER caused a package containing approximately 400 Viagra pills and approximately 500 Cialis pills to be imported to the United States from the Peoples Republic of China. The Viagra and Cialis pills were later determined to be counterfeit.

In violation of Title 18, United States Code, Section 371.

COUNT TWO
(Misbranded Drugs)

1. On or about April 25, 2008, in the Houston Division of the Southern District of Texas, the defendant,

RICHARD FLETCHER

aided and abetted by others unknown to the grand jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce drugs that were misbranded, namely that a package containing counterfeit Viagra pills were labeled in a manner to falsely represent that the package contained the genuine Viagra pharmaceutical drugs.

In violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Sections 331(a) and 333(a)(2).

COUNT THREE
(Misbranded Drugs)

1. On or about June 30, 2008, in the Houston Division of the Southern District of Texas, the defendant,

RICHARD FLETCHER

aided and abetted by others unknown to the grand jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce drugs that were misbranded, namely that a package containing counterfeit Cialis pills were labeled in a manner to falsely represent that the package contained the genuine Cialis pharmaceutical drugs.

In violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Sections 331(a) and 333(a)(2).

COUNT FOUR
(Misbranded Drugs)

1. On or about June 30, 2008, in the Houston Division of the Southern District of Texas, the defendant,

RICHARD FLETCHER

aided and abetted by others unknown to the grand jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce drugs that were misbranded, namely that a package containing counterfeit Viagra pills were labeled in a manner to falsely represent that the package contained the genuine Viagra pharmaceutical drugs.

In violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Sections 331(a) and 333(a)(2).

COUNT FIVE
(Trafficking in Counterfeit Goods)

1. On or about June 30, 2008, in the Houston Division of the Southern District of Texas, the defendant,

RICHARD FLETCHER

aided and abetted by others unknown to the Grand Jury, did intentionally traffic and attempt to traffic in goods, namely, pharmaceutical drugs, and knowingly used a counterfeit mark on and in connection with such goods, that is, the Viagra trademark used to identify a pharmaceutical product marketed by Pfizer Pharmaceuticals, which counterfeit mark was identical with and substantially indistinguishable from the genuine mark in use and registered for that good on the principal register in the United States Patent and Trademark Office, and the use of which mark was likely to cause confusion, mistake and deception regarding said mark.

In violation of Title 18, United States Code, Sections 2 and 2320(a).

COUNT SIX
(Trafficking in Counterfeit Goods)

1. On or about June 30, 2008, in the Houston Division of the Southern District of Texas, the defendant,

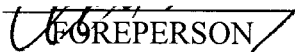
RICHARD FLETCHER

aided and abetted by others unknown to the Grand Jury, did intentionally traffic and attempt to traffic in goods, namely, pharmaceutical drugs, and knowingly used a counterfeit mark on and in connection with such goods, that is, the Cialis trademark used to identify a pharmaceutical product marketed by Eli Lilly Company, which counterfeit mark was identical with and substantially indistinguishable from the genuine mark in use and registered for that good on the principal register in the United States Patent and Trademark Office, and the use of which mark was likely to cause confusion, mistake and deception regarding said mark.

In violation of Title 18, United States Code, Sections 2 and 2320(a).

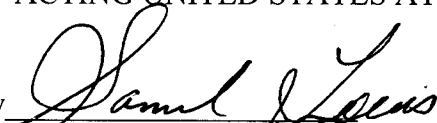

RICHARD FLETCHER

ORIGINAL SIGNATURE ON FILE


TIM JOHNSON

TIM JOHNSON
ACTING UNITED STATES ATTORNEY

by


SAMUEL J. LOUIS
Assistant United States Attorney